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EVALUATION OF MONTANA'S FLOODPLAIN MANAGEMENT PROGRAM

J. E. ...
Helena, Montana

Introduction

The State of Montana has actively promoted sound flood plain management for it's communities since the early 1970's. The Montana Floodway Management and Regulation Act, passed in 1971 and revised in 1973, committed the Department of Natural Resources and Conservation (DNRC) to working with local units of government in developing and implementing floodplain management programs which would meet the minimum standards promulgated in the Act. These standards emphasized the mitigation of flood hazards through the use of locally-enforced regulatory measures (including zoning, building permit systems, and subdivision regulations) in areas of a municipality or county susceptible to flooding. To coordinate and direct efforts aimed at fulfilling state responsibilities in carrying out the intent of the Act, the Floodplain Management Section in the Water Resources Division of DNRC was created.

Initially, most activities of the DNRC's Floodplain Management Section were directed at satisfying the requirements of the 1971 Floodway Management and Regulation Act. This limited emphasis would change later in the decade. Because annual disaster relief payments to victims of flooding amounted to many millions of dollars and were continuing to rise at an alarming rate, the Federal government was also interested in encouraging measures which would mitigate flood losses. The National Flood Insurance Program, (NFIP) created in 1968, enabled property owners to buy flood insurance at reasonable, Federally-subsidized rates. In order for insurance to become available to property owners in a given community, however, that community must first have committed itself to carrying out local flood plain management measures aimed at restricting development in flood hazard areas. The early NFIP program was voluntary, with no effective sanctions imposed against communities who were eligible to participate but chose not to. As such, the program was largely unworkable at this stage. But Legislation passed in 1973 as part of the Flood Disaster Protection Act provided that severe restrictions on the use of Federally-related financial assistance funds would be applied to eligible communities

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Introduction

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Initially, most activities of the DNRC's Floodplain Management Section were directed at satisfying the requirements of the 1971 Floodway Management and Regulation Act. This limited emphasis would change later in the decade. Because annual disaster relief payments to victims of flooding amounted to many millions of dollars and were continuing to rise at an alarming rate, the Federal government was also interested in encouraging measures which would mitigate flood losses. The National Flood Insurance Program, (NFIP) created in 1968, enabled property owners to buy flood insurance at reasonable, Federally-subsidized rates. In order for insurance to become available to property owners in a given community, however, that community must first have committed itself to carrying out local flood plain management measures aimed at restricting development in flood hazard areas. The early NFIP program was voluntary, with no effective sanctions imposed against communities who were eligible to participate but chose not to. As such, the program was largely unworkable at this stage. But Legislation passed in 1973 as part of the Flood Disaster Protection Act provided that severe restrictions on the use of Federally-related financial assistance funds would be applied to eligible communities

or individuals who continued to resist enrollment. This legislation virtually mandated that all identified flood-prone communities in the nation participate in the NFIP.

To facilitate compliance with the Federal mandate, state co-ordinators for the NFIP were designated. In Montana, this task logically fell to the DNRC and its Floodplain Management Section. Because of the time needed to "get the ball rolling" at the Federal level, the Section did not really feel the full impact of this role as state coordinator until 1978.

The rise in prominence of the NFIP has added significantly to the duties and responsibilities of the DNRC's Floodplain Management Section. The Section's role as state co-ordinator for the national program dominates its activities at present. State mandates for floodplain management must also be simultaneously fulfilled. In many cases, the requirements for both federal and state programs are compatible with each other. In other cases they are not. To encourage an efficient state-wide approach to floodplain management, it is desirable to identify both the essential and extraneous aspects of the present program.

The first section of this paper deals with Montana's floodplain management program and its fundamental features. In the second section, the National Flood Insurance Program is explained. The rise in prominence of the NFIP and its affect on the state floodplain management program is examined. Finally, several considerations important to the implementation of an efficient program that satisfies both state and federal objectives are identified and analyzed. Possible options for the future direction of the state floodplain management effort are then discussed.

THE MONTANA FLOODPLAIN MANAGEMENT PROGRAM

The Montana Floodplain Management Program was initiated in 1971 with the passage of the Floodway Management and Regulation Act, now the Montana Floodplain and Floodway Management Act (Chapter 5, Title 76). The Act formally provided a legal basis for requiring local adoption and enforcement of land-use regulations which discourage construction or substantial improvements of business and residential properties in areas subject to flooding. Justification for it's passage was the state finding that:

". . . the public interest necessitates management and regulation of flood-prone lands and waters in a manner consistant with sound land and water use management practices which will prevent and alleviate flooding threats to life and health and reduce private and public economic losses."

As reflected in the provisions of the old Floodway Management and Regulation Act, it was the states intent to:

- a. guide development of the floodway areas of the state consistant with flood study findings.
- b. provide state coordination and technical assistance to local units of government in management of flood areas,
- c. encourage local governmental units to manage flood-prone lands including the adoption, enforcement and administration of land-use regulations,
- d. provide the Department of Natural Resources and Conservation with the authority necessary to carry out a comprehensive floodplain management program for the state.

Thus, the Act formally designated the Department of Natural Resources and Conservation as the lead agency in the implementation effort.

The Act required the DNRC to "initiate a comprehensive program for the delineation of designated floodplains and designated floodways for every water course and drainway in the state." Federal money had already been appropriated to agencies such as the Corps of Engineers, the USGS, and the SCS for this purpose, as these agencies possessed the technical expertise, manpower, and hydrologic information to carry out studies of this type. One of the DNRC's major responsibilities was to develop a priority list of Montana stream and river stretches on which to conduct the delineation studies, and to arrange a contract with the appropriate agency to carry out the study.

Flood-prone areas given first priority were those already intensively developed. Some of the first studies completed were on the Missouri River at Great Falls and the Clark Fork in Missoula. If money allotted for delineations was still available after the floodplain/floodway of a heavily developed area had been mapped, attention was given to adjacent regions where development appeared imminent. Thus, floodplain delineations frequently included both incorporated and unincorporated lands.

At this point it is important to understand some of the basic technical concepts cited in the 1971 Legislation. The Act states that floodplain delineations are to be based on a 100-year frequency flood; that is, a flood having a 1% chance of occurring in any given year. This is also referred to as the "base flood." The floodplain of the 100 year frequency flood, is defined as the total area adjoining the water course or drainway which would be covered by the floodwater.

When enough technical data were available, the floodplain was differentiated into two zones; a floodway zone and a flood fringe zone. The floodway refers to a

higher hazard area that consists of the stream channel and the immediate overbank areas. This is the area which is considered necessary to carry floodwaters downstream and is generally subject to faster water velocities and greater floodwater depths. The flood fringe, on the other hand, is a lower hazard area outside the floodway proper which is still completely inundated by the floodwaters. It consists of floodwater storage and backwater areas, is characterized by low water depths and velocities, and usually lies on the outer part of the floodplain. These designations are very important in that state law requires local jurisdictions to adopt and enforce more restrictive land use regulatory measures in the floodway zones than in the flood fringe zones. Until this differentiation is made, however, the entire floodplain is treated as a flood fringe zone from the standpoint of applicable land use regulations.

Because the state program places the initiation for floodplain land-use regulations at the local governmental level, department consultation with the effected political subdivisions is strongly emphasized. Consultation includes, but is not necessarily limited to, the following:

1. The Section holds informational meetings with the affected local government's officials before the study begins. At this time the delineation study and it's implications are discussed. Local officials are also encouraged to submit pertinent data to expedite delineation studies. Information on past flooding and economic impacts of flooding on the community are especially valuable. In many cases, meetings with the Federal agencies conducting the studies are also necessary to relay this information. (note: the term "community" can refer either to a county or a municipality.)

2. The section follows the progress of the studies undertaken and makes an attempt to notify local officials on the progress of the floodplain delineation

studies for their community. Because of the time it takes to complete a study of this type (as long as three years) and the innately high turnover of elected local officials, keeping a local governing body as a whole up to date at times presents a problem.

3. Efforts are directed toward local dissemination of information so that interested persons will have an opportunity to bring relevant data to the attention of the Section. Generally, however, this type of information is not brought forward until after the delineation study is completed and individuals are given the opportunity to contest the results.

After completion of a floodplain delineation study, the Section initiates the state designation process for the identified flood-prone areas. The end point in this process is the official state adoption of the study conclusions on the location of floodplain boundaries.

To begin the state designation process, maps showing the proposed floodplain boundaries are prepared and the Floodplain Management Section holds a public hearing on the results in the affected community. Information on the locations of floodplain boundaries is presented to people attending the hearing and is also available to any other interested parties. People who wish to contest the floodplain boundaries shown on the study maps are given the opportunity to present their own data and testimony at the hearing. In many cases, people contesting the study findings believe that they will be unduly restricted in managing land within the identified floodplain. Therefore, they believe it is in their best interest to challenge the bounds in an attempt to minimize the amount of land lying within the designated areas. The Section reviews the contested cases and decides which ones are valid. A field check may then be conducted by Section personnel to reassess the

floodplain or floodway boundary. If substantial changes are required, another hearing may be necessary.

The public hearings mentioned above can, on occasion, be rather fiery affairs. Many of the people attending the hearings object to the fact that the study results will be used as a base for implementation of zoning measures, building codes, etc. Land-use regulation has never enjoyed enormous popularity at the local level. In general, the public resists acknowledging the possibility of a major catastrophic flood occurring, especially if nothing of this nature has happened in the recent past. Neither do they appear to consider eligibility for national flood insurance important. The Section has long felt that because of the unpopularity of the subject matter, chairing of these public hearings by a DNRC representative takes some of the initial heat off local officials who will eventually be responsible for adopting, administering and enforcing the required land-use regulations within the designated floodplain.

When all reasonable questions on the results of the delineation study have been evaluated and the appropriate changes made, the Section presents the study findings to the DNRC Board. If the Board approves the findings, the designated areas are formally established as the floodplain and/or floodway for the particular stretch of river. Any further alteration in the adopted boundaries requires another public hearing as well as Board review and endorsement.

Upon Board approval, the political sub-division is allowed six months to develop and adopt land-use regulations which meet or exceed the minimum standards of the Board. The minimum standards are detailed in Administrative Order 36-3-3, subchapter 6. The county is responsible for enacting these legal measures for unincorporated areas lying within the designated floodplain. In incorporated areas, the appropriate municipality assumes this responsibility. Because of their familiarity with the

requisite standards, the Floodplain Management Section provides valuable assistance to local governing bodies in adopting and administering the required land-use regulations.

If the political subdivision has failed to act within the allotted 6 month period; the DNRC is permitted to enforce the minimum regulatory requirements within the designated floodplain and/or the designated floodway. Thus far, only Cascade and Ravalli Counties have failed to meet this time stipulation. In these cases, DNRC retained administrative and enforcement responsibilities until the necessary regulations were enacted.

The Montana Floodplain and Floodway Management Act gives local governments the authority to specifically regulate floodplain land use through a building permit system. The Act specifically requires that delineation study results defining the geographical area within which this authority is applied be approved by the state. Therefore, the local governments which require such power cannot legally enforce floodplain regulations until the delineation study results are adopted by the state DNRC Board.

The state enabling provisions are not particularly significant with regard to the expansion of regulatory capabilities within incorporated areas. Municipal governing bodies already possess the legal tools to administer and enforce zoning codes, subdivision regulations, and building/housing codes here. County governments, on the other hand, do not ordinarily hold this type of power except in situations which warrant the use of temporary emergency zoning authority. Thus, the enabling legislation in the Act provides the most practicable means for counties to attain the legal power to draft, adopt, and enforce measures aimed at limiting development of floodplains in unincorporated areas over the long term. The importance of this legislation in facilitating county compliance with floodplain management mandates is

illustrated by briefly analyzing other means of developing similar authority at the county level.

County governments have two alternative means by which to attain the authority necessary to regulate floodplain land use. Title 76, Chapter 2, Sections 101-112 of the Montana Code authorizes any Board of County Commissioners to create a planning and zoning district "upon petition of 60% of the freeholders affected thereby." Given the unpopularity of land use regulation at the local level and the requirement that at least 60% of the property owners affected by that regulation would have to petition for the formation of the zoning district, the practicality of acquiring the necessary regulatory capability through this mechanism is minimal. Title 76 Chapter 2, Sections 201-228 requires the development and county board adoption of a comprehensive land use development plan before the county can assume permanent zoning authority. Zoning powers may only be used to accomplish the stated objectives of the comprehensive plan. Authority is administered through a zoning district. But, only 40% of the property owners within a proposed district need oppose its purpose to stop district formation. At present, only about 15 of Montana's 56 counties have adopted comprehensive plans sufficient to give them the capability to regulate land use in flood plains. Another 10 counties are currently developing such plans. Given that the development and adoption of an effective plan has taken 2-3 years in the past, it is unlikely that the remaining counties could effectively use this avenue quickly enough to comply with the time requirements of floodplain management mandates.

DNRC responsibilities do not stop once communities have implemented the mandatory control measures. When requested to do so, the Floodplain Management Section assists in the review of plans for development or improvement of property located within a flood-hazard area to determine compliance with floodplain management standards. Although only a relatively small percentage of time is spent in providing this type

of assistance, it is considered one of the more important and challenging duties of the Floodplain Management staff.

The primary responsibility for compliance review however, lies at the local level. In many cases, these local units do not have at their disposal the technical persons necessary to accurately assess this compliance. Copies of approved permits for improvement/development of property in flood prone areas must be forwarded to the Floodplain Management Section as part of a record procedure. Examination of the permits sometimes reveals approvals which allow violations of the established floodplain regulations. Since the permit has already been issued, however, it is usually too late to rectify such a conflict.

The Section also assumes an important role in reviewing requests for proposed major subdivisions which will extend into an identified flood prone area. A major subdivision is one which will involve division of a land tract into more than 5 parcels. The Section works closely with the Subdivision Bureau of the Department of Health and Environmental Sciences in this regard. Particular attention is given to the planned methods of waste disposal for the development. If the subdivision will be hooked to city sewers by interceptors which run through an identified flood hazard area, provisions must be made for floodproofing the interceptors in order for an approval to be issued. If the development will utilize soil absorption sewage systems, these systems must be located outside the identified floodplain.

Where minor subdivisions are proposed, the appropriate local unit of government reviews the plans for compliance with existing floodplain management standards. Again, the Floodplain Management Section offers assistance in assessing the proposals, but often Section review takes place after the local unit has taken the initiative to grant the development permit.

Special problems related to minor subdivisions arise where local jurisdictions have not yet adopted floodplain land use regulations but are in the process of doing so. Developers may propose subdivisions in areas not yet subject to the regulations. If the plans are approved by the local review board and actual construction begins prior to the time regulations become effective, the development becomes "grandfathered in" and the regulations do not apply to it.

Another related problem occurs when plat proposals are approved and parcels are sold at a price based on their development potential. If floodplain regulations then become effective before construction commences, the buyer may be left with land whose value has been significantly deflated because of the restrictions imposed on the development of that land.

Local persons responsible for reviewing and approving subdivision applications must be made aware of considerations such as the status of floodplain delineation studies in their jurisdictions and the types of standards that will apply to a development within these areas. This information must be readily available so that effective floodplain management is not precluded by fast-operating development interests. In order to achieve this objective, it is imperative that the Floodplain Management Section develop and maintain close communication with the persons responsible for review of minor subdivision proposals at the local level. The Section's ability to meet this necessity has been hampered in the past by lack of available staff, time, and money.

THE NATIONAL FLOOD INSURANCE PROGRAM

The first section of this report has described some of the major aspects, objectives and problems of the state Floodplain Management Program. But the DNRC through the Floodplain Management Section has assumed additional responsibilities as

the state coordinator for implementation of the National Flood Insurance Program (NFIP). Although the National Flood Insurance Program had been in existence since 1968, Department involvement with it did not really begin to mushroom until 1978. In order to explain the kinds of complications which have arisen through the simultaneous administration of these two programs it is important to gain an understanding of the NFIP's basic features.

The National Flood Insurance Program is presently administered by the Federal Insurance Administration (FIA) within the Federal Emergency Management Agency (FEMA). There are two primary objectives of the program: First, it makes available low cost, Fedreally-subsidized flood insurance to persons already located in flood-prone areas. Because of the high risk factor associated with this type of insurance, private insurers do not offer flood insurance policies independent of the Federal government subsidy. In order for property owners of an area to become eligible to purchase flood insurance, their communities must first have adopted land use measures which discourage development of flood hazard areas. The second objective of the program, then, is to minimize future flood damages by encouraging a locally adopted and administered system of sound land use regulation for identified flood-prone lands. This second objective corresponds with the intent of the State of Montana Floodplain Management Program.

One of the key provisions of the present National Flood Insurance Program is a requirement that the Federal Insurance Administration (FIA) furnish a preliminary flood hazard boundary map to all flood-prone communities in the nation. Along with the map, FIA sends a letter explaining the program, application forms, and other information to community officials. Upon receipt of this notification, an affected community has one year to adopt floodplain land use regulations consistent with minimum Federal guidelines and to apply for participation in the emergency phase of the NFIP. Under the emergency phase, limited amounts of flood insurance become

available to local property owners and subsidized rates are charged for all structures regardless of their risk to damage by flooding. If a community fails to act within the allotted year, Federal agencies may not approve grant monies, mortgage backing (FHA mortgage insurance, VA mortgage guarantees, etc.) or any other taxpayer funds including disaster relief, to support the purchase, construction, or improvement of property located in the community's flood-prone area. The ban would apply to both public and privately financed projects and it remains in effect for as long as the community chooses not to participate in the program.

After the community has entered the Emergency phase of the NFIP, the FIA contracts with an agency (SCS, USGS, Corps) or private consultant to perform a detailed on-site floodplain delineation study in the community. As in the State of Montana program, these studies are based on the 100-year frequency flood. The bounds of the floodway are determined and the floodplain is differentiated into risk zones so that actuarial insurance rates can be developed. Following the completion of this study the community's floodplain land use regulations are strengthened. More restrictive standards are required within the designated floodway. After these revisions are carried out, the community is eligible to enter the Regular phase of the NFIP. Under the Regular phase, increased limits of flood insurance become available locally and the premiums charged vary according to a property's exposure to flooding. For example, buildings which are not floodproofed (usually those constructed prior to the imposition of floodplain regulations) would be charged a higher premium than structures meeting certain floodproofing standards.

Until 1973, community participation in the NFIP was entirely voluntary with no sanctions imposed on communities who were eligible to join but chose not to. Congressional action in 1973 changed this. Legislation was passed stating that for all communities who had received a preliminary flood hazard boundary map and were therefore identified as being flood-prone, non-participation would result in the

restriction of available Federally-related monies mentioned above. The legislation substantially effected individual property owners, also. Persons owning property in identified flood hazard areas which had not yet been so designated at the time the property was purchased were not required to buy flood insurance from FIA. If that property were sold, however, the new owner would then be required to purchase at least minimum flood insurance coverage to avoid the Federal financial restrictions.

The 1973 Congressional directive caused a sharp increase in the number of Montana communities interested in entering the NFIP. Initially the Floodplain Management Sections role as state coordinator for the NFIP was concerned with assisting communities in gaining eligibility for the Emergency phase. Assistance consisted mainly of holding informational meetings in the interested communities and of coordinating enrollment activities with FIA.

As communities joined the Emergency phase of the NFIP, FIA began preparations to carry out the detailed floodplain delineation studies necessary to allow enrollment in the Regular phase. These detailed studies would be used in determining floodway and flood fringe areas in much the same way as the state-guided studies had been. Through the efforts of Section personnel, it was agreed that the more stringent state criteria rather than the federal criteria would be used in the floodway delineations. This would assure consistency between studies carried out by the FIA and those which had already been initiated under the state Floodplain Management Program. But use of the more strict state criteria also meant that Montana communities would be held responsible for regulating a larger floodway area than if only federal criteria had applied.

Eventually the state effort in delineating 100-year floodplains would be curtailed. Where the initial responsibility for mapping was given to the individual states and their agencies, most of that authority was now to be assured by FEMA.

There was little point in expending state time and effort in contracting and supervising their types of studies when FEMA had the enormous resources at it's disposal to accomplish the same task over a much shorter time period. In addition, flood insurance studies done in Montana would continue to be based on state delineation criteria. These study results could therefore be used in implementing the requirements for Montana's floodplain management program as well.

Integration and coordination between the existing state program and the NFIP was carried out on other levels also. The Floodplain Management Section assisted FIA in developing a priority list of Montana communities on which to conduct the detailed flood insurance studies. This priority list closely reflected state and local interests. The Section also expanded it's information activities with affected community officials. In addition to meeting needs for local consultation under the state floodplain management program a considerable time was now devoted to concerns related to the requirements for entrance into the Regular phase of the NFIP. As the state coordinator for NFIP, the Section assumed many of the responsibilities for assuring local input into the detailed flood insurance studies that it had for state-initiated studies. These included notification of local officials on the progress and results of delineation studies, encouraging local dissemination of information related to floodplain management and requesting that the community submit pertinent data on flood hazards to help in carrying out the study.

In 1978, the first of FIA's detailed flood insurance studies for Montana communities were completed. As part of the state coordinator responsibilities for the NFIP, Section personnel attended final community meetings to present the results of the detailed floodplain delineation/flood insurance study to the local people. Public hearings on the developed floodplain/floodway boundries were also necessary so that the delineations could be legally used in the implementation of the Montana state floodplain law. Appeals were received, field checks conducted and a re-

evaluation of the delineations was made. The Section would then make recommendations to the FIA on any alteration of the proposed flood hazard boundaries. Another public hearing might then be in order depending on the magnitude and types of changes made in the mapped floodplain/floodway boundary. Board adoption of the results followed. The local governing bodies were notified of the final delineations and maps were sent to the clerk and recorder. The whole process, from the time of study completion to the time of board adoption, has taken as long as 1 1/2 years in some cases.

The problem at this stage was principally one of sheer bulk. The mobilization of Federal resources together with the fact that many of the detailed FIA studies had been started at about the same time meant that a number of completed studies hit the Section almost simultaneously. The Section was hard-pressed to keep up with it's responsibilities for holding public hearings and information meetings, and conducting field checks of appeals.

Recently, the study completion schedule has been a bit more evenly distributed. However, a high percentage of FIA flood insurance studies for Montana communities are slated for completion within the next 2 years. The increasing workload involved together with the limited budget and staff of the Floodplain Management Section could severely jeopardize the Section's ability to fulfill it's responsibilities in the state designation process within a reasonable time period.

Once floodplain and floodway boundaries were established for a community, floodplain land-use regulations had to be developed and adopted within 6 months from the date that the community received notice of the 100-year flood elevations. Assistance provided by the Floodplain Management Section was critical in assuring that these regulations would meet both the standards promulgated as part of the state program and those required to enter into the Regular phase of the NFIP. Unfortunately, regulations that met minimum state guidelines did not necessarily meet



minimum Federal guidelines, nor did adoption of minimum Federal directives always mean that state standards were satisfied.

A number of discontinuities between federal and state requirements become apparent immediately. Some of these discrepancies are major, others are relatively minor. For example:

Floodproofing requirements vary. State law requires that "residential structures must be constructed on suitable fill such that the lowest finish-floor elevations (including basement) are two feet or more above the flood of 100-year frequency." To comply with Federal law, the lowest flow (including basement) need only be elevated to the 100-year frequency flood level. In this case, the state is more strict.

State law recognizes designs for structures which would allow internal flooding of the lowest floor provided that floor is "limited to such uses as parking, loading areas, and storage of equipment or materials not appreciably affected by flood water," and that the walls and floors are designed and constructed of materials resistant to flooding up to an elevation of 2 or more feet above the 100-year frequency level. Federal law does not allow for internal flooding in any case. Here the Federal law is more stringent.

Under State law, the development of a solid waste disposal site or soil absorption sewage system anywhere in an identified floodplain is flatly prohibited. Federal law requires only that, in flood-prone areas, on-site waste disposal systems are to be located to avoid impairment to them or contamination from them during flooding. Presumably, this means that if an on-site waste disposal system was raised above the level of the base flood (as in a mound system) it could be allowed under Federal law.



Federal laws deal extensively and specifically with anchoring requirements for mobile homes in flood-hazard areas and expressly prohibits the placement of any new mobile home except, in an existing mobile home park or mobile home division, within the adopted regulatory floodway. State floodplain management guidelines address mobile homes in a much less specific and less restrictive fashion. In general, they are treated as any other residential structure except that "mobile homes without wheels and towing vehicles or otherwise not readily moveable" are prohibited in the designated floodway.

Federal guidelines require that community officials keep record of 1) the lowest habitable floor (including basement) of all new or substantially improved structures, 2) whether or not such structures contain a basement and, 3) the elevation to which the structure has been flood proofed. State guidelines contain no such stipulation.

Recently, a model ordinance meeting both minimum state floodplain management requirements and those for the NFIP was developed by the Section staff. Use of this model ordinance has helped in reducing the confusion of local officials charged with the responsibility of developing and adopting floodplain land use regulations which comply with state and federal criteria.

After a satisfactory ordinance meeting both state and federal guidelines is developed, the Floodplain Management Section provides administrative and technical assistance to the community when needed. This too, may present problems under certain circumstances.

Frequently, local officials do not have the expertise necessary to decipher state and federal statutory requirements and to determine the compliance of proposed changes in floodplain land-use with such requirements. Section staff are often

consulted by these local officials to play an advisory-interpretive role. Provision of this type of assistance is imperative if floodplain management programs are to be implemented effectively at the local level. As has been mentioned previously, this is one of the most important and challenging tasks performed by Floodplain Management Section staff.

MONTANA FLOODPLAIN MANAGEMENT BUDGET

Currently, the Floodplain Management Section is operating with a staff of two full-time engineers and a yearly budget of about \$45,000.

IMPORTANT ISSUES IN THE STATE FLOODPLAIN MANAGEMENT PROGRAM

1. The Floodplain Management Section is extensively involved in the process by which floodplain delineation study results are adopted by the State. This involvement consumes a considerable proportion of the Section's resources. Under the present State law, however, state designation is necessary so that some Montana communities can attain the authority to implement mandated land use regulations in identified flood-hazard areas.
2. Few activities are directed at explaining and selling the existing floodplain management programs. Because the programs involve various forms of land-use regulation, they do not sell themselves.
3. It has been very difficult to keep local officials sufficiently up to date on the progress of delineation studies and how the study results will impact their community. Failure to fulfill this information role often leads to avoidable conflicts between developments in flood-prone areas and enforcement of required land-use regulations once these measures are instituted.



4. Each community is ultimately responsible for assuring that development/improvement of property in identified flood-prone areas complies with the communities floodplain land use regulations. Technical expertise to adequately assess this compliance is frequently lacking at the local level. There is a very real need for proper compliance review if effective implementation of floodplain mangement program objectives is to be achieved. Because of present committments to other aspects of floodplain management, the Section is unable to provide the necessary assistance except on a very limited basis.

OPTIONS FOR MONTANA'S FLOODPLAIN MANAGEMENT PROGRAM

The State of Montana can pursue one of four options with regard to floodplain management. In the following section, these options are identified and briefly evaluated.

Option 1: The state can drop it's involvement with floodplain management.

Pursuit of this option would eliminate the most effective mechanism for a sound approach to floodplain management in Montana. The involvement of the State of Montana in the floodplain management effort is essential for 3 reasons:

1. State enabling legislation contained in the Montana Floodplain and Floodway Management Act provides the most practicable means by which counties can assume the necessary authority to permanently regulate land use in floodprone areas. Possession of this power is imperative if all Montana counties are to achieve compliance with Federal floodplain management mandates.

2. State involvement is important in promoting a consistant approach to floodplain management throughout Montana. It assures that the criteria used to

delineate floodways remain uniform so that communities required to regulate identified floodprone land do so based on the same scale of flooding risk. State involvement also encourages the application of similar land use restrictions to similar types of activities which may extend across local governmental boundaries.

3. Assistance is more readily available and accessible to local governments requesting information, advice, or interpretation related to State and/or Federal (NFIP) requirements. In many cases the next best source for this service would be the FEMA Regional office in Denver, Colorado.

Option 2. The state can reduce its present involvement in floodplain management by eliminating the need for state designation of floodplain delineation study results.

Pursuit of this option would involve a revision of the Montana Floodplain and Floodway Management Act. At this time, a primary responsibility of the Floodplain Management Section is to provide adequate opportunity for public review of floodplain delineation studies. The goal of new legislation should be to shift this responsibility from the Section where it lies now, to the individual communities.

The Floodplain Management Section has advertized, prepared for, and conducted many of the public hearings associated with a state designation of floodplain delineation studies. As of February, 1980, the Section had taken the lead role in the hearing process for almost 100% of the counties and approximately 85% of the municipalities for which detailed delineation studies had been completed. The Section also has the responsibility for evaluating and conducting field checks on appeals received during the hearing process. These activities consume a considerable proportion of the Sections staff time and budget.



New legislation should contain three important provisions. First, it must allow communities (i.e. counties) the necessary legal powers to regulate floodplain land use without making the assumption of this power dependent upon the lengthy state designation process which exists presently. For instance, stipulations in new legislation might allow communities the authority to institute a building permit system only where this power is used 1) to regulate land use in identified floodplains and floodways, and 2) to comply with State and Federal requirements for floodplain management.

Second, communities must be specifically directed to adopt and enforce floodplain management regulations at least as strict as the established state minimum standards. This provision would require local governing units to manage their own floodplain regulatory program. It would simultaneously release the DNRC from the liability of having to administer a local program in the event that the affected governing unit refused to accept floodplain management responsibilities. In addition, such a clause would continue to promote a consistent approach to floodplain land-use regulation across the state.

Third, the amendments must insure that floodplain delineations continue to be based on established State, rather than Federal criteria. This is necessary in order to maintain state-wide consistency in floodplain and floodway determinations.

Legislation emphasizing greater local government participation in the review and appeals process would require technically competent personnel at the local level. This could prove a very difficult obstacle, although the threat of Federally-imposed financial restrictions may provide sufficient impetus for communities to find ways of adequately assuming this increased involvement. The Floodplain Management Section could continue to provide some assistance in field reviews of appeals and would act as a technical consultant to local floodplain management officials. But it's primary



duties would be to assist communities in determining compliance with their floodplain land use regulations and in interpreting State and Federal statutory and procedural requirements related to floodplain management.

Option 3: The state can continue to fulfill its present roles and responsibilities in floodplain management.

FIA flood insurance studies for many Montana communities have yet to be completed. For example, detailed flood insurance studies for approximately 24 Montana communities are scheduled for completion within the next year. The last of these studies are to be concluded by mid-1982. But the intervening period will be one of hectic activity as the Section attempts to fulfill its responsibilities in assuring that the necessary public hearings are conducted and the study results properly adopted by the State through the designation process. Because of the increase in workloads that the incoming studies will cause, additional staff and financial support will likely be required if the Floodplain Management Section is to adequately fulfill its existing responsibilities.

Much of the Sections activities have revolved around its role as state coordinator for the NFIP. As noted above, adequately assuming this role will demand an even greater investment of time and resources than it has in the past. In view of this the DNRC has applied for financial assistance through the State Assistance Program of the NFIP. The grant proposal requested approximately \$68,000 and \$50,000 for fiscal years 1981 and 1982 respectively. Much of the money would help support those activities of the Section which culminate in the official state designation of FIA floodplain delineation study results. If the grant request is denied or significantly reduced and the present program budget cannot be increased to cover projected costs, the Sections ability to operate effectively as a state coordinator will be jeopardized. However, the states extensive participation in the NFIP far



provides a sound basis for justifying Federal financial assistance in support of Montana's Floodplain Management Program

Option 4: The State can increase its activities and responsibilities in floodplain management.

State responsibility might be expanded in three areas:

1. Information-education activities could be aimed at increasing the understanding of floodplain management by the general public. An information pamphlet on the state's Floodplain Management Program has already been published by the DNRC. But more frequent contact with affected property owners and more effective use of the media would be desirable in explaining the justification, mode of operation and progress of floodplain management efforts in Montana. Budget limitations currently preclude an expansion of the program in this direction.

2. Greater emphasis could be placed on keeping local community officials up to date on the progress of floodplain delineation studies and in explaining the Floodplain Management Program. To accomplish this in an effective manner, Section personnel should more closely maintain contact with these community officials. Again, budget limitations currently preclude this.

3. The Floodplain Management Section could increase its efforts to assist communities in the review of development proposals to determine compliance with floodplain management standards. The need for this type of assistance has already been noted. Even greater state involvement in this regard might be considered. For instance, approval of a proposed development in an identified floodplain might be made conditional on the outcome of proposal review by the Floodplain Management



Section. It is anticipated that assumption of this responsibility would require 1 additional full-time staff member and some allowance for travel.

[illegible]



